UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/1991/57
23 April 1991

ORIGINAL: ENGLISH

First regular session of 1991
13-31 May and 17-21 June 1991
Item 8 of the provisional agenda*

HUMAN RIGHTS QUESTIONS

Allegations regarding infringements of trade union rights

Note by the Secretary-General

1. The Director-General of the International Labour Office informed the Secretary-General, in a letter dated 4 July 1988 (E/1989/49, annex I), that the Governing Body of the International Labour Office had decided to refer to the Economic and Social Council, in accordance with Council resolution 277 (X) of 17 February 1950 (see annex I below), certain allegations of infringement of trade union rights in South Africa which had been referred to the Director-General of the International Labour Office by the Congress of South African Trade Unions (COSATU) in a letter dated 11 May 1988 (E/1989/49, annex II).

2. In accordance with Council resolution 277 (X), the Secretary-General, on 21 July 1988, requested the Government of South Africa to consent to having the allegations referred to the Fact-Finding and Conciliation Commission on Freedom of Association of the International Labour Organisation (ILO). In a note verbale dated 14 February 1989, the Government replied that it would be premature to refer the complaint to the Commission because COSATU had not yet exhausted the internal procedures available to it to settle any differences it might have regarding amendments to the South African Labour Relations Act, which was the subject-matter of the complaint (see E/1989/49, annex III). The Economic and Social Council, in resolution 1989/82 of 24 May 1989, requested the Secretary-General to persist in his efforts to ensure the referral of the complaint made by COSATU to the Commission.

---

* E/1991/30.

91-12835 2302f (E)

/...

READEX FICHE

3. The Secretary-General, on 12 February 1990, again asked the Government of South Africa to agree to the referral of the complaint to the Commission. In a note verbale dated 1 May 1990 (E/1990/87, annex) and a letter dated 21 May 1990 (E/1990/87/Add.2, annex), the Goverament indicated that it remained of the view that it would be premature to refer the dispute to the Commission. In decision 1990/257 of 25 May 1990, the Council took note of the note by the Secretary-General by which the letter dated 21 May 1990 from the Permanent Representative of the Republic of South Africa was brought to its attention. In resolution 1990/44 of 25 May 1990, the Council, inter alia, expressed its concern about the failure of the Government of South Africa to comply with the provisions of Council resolution 1989/82, notwithstanding the limited steps taken so far.

4. The Secretary-General has the honour to inform the Council that he has received a note verbale dated 27 February 1991 from the Permanent Representative of the Republic of South Africa, in which he states that the Government is now prepared to agree that the allegations made by COSATU should be referred to the Fact-Finding and Conciliation Commission on Freedom of Association of ILO (see annex II below).

5. Pursuant to resolution 277 (X), the Council is to transmit to the Fact-Finding and Conciliation Commission on Freedom of Association, through the Governing Body of the International Labour Office, the allegations of infringement of trade union rights in South Africa made by COSATU in May 1988 (E/1989/49, annex II).

Annex I

227 X. TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

Resolution of 17 February 1950

The Economic and Social Council,

Notes with approval the decision taken by the Governing Body of the Internatinal Labour Office at its one hundred and tenth session to establish a Fact-Finding and Conciliation Commission on Freedom of Association with the terms of reference set forth in the letter of 19 January 1950 from the Director-General of the International Labour Office to the Secretary-General of the United Nations, a/

Considering that this action corresponds to the intent of Council resolution 239 (IX) and is likely to prove the most effective way of safeguarding trade union rights,

Decides:

(a) To accept on behalf of the United Nations the services of the International Labour Organisation and the Fact-Finding and Conciliation Commission as established by the International Labour Organisation;

(b) To forward to the Governing Body of the International Labour Office, for its consideration as to referral to the Commission, all allegations regarding infringements of trade union rights received from Governments or trade union or employers' organizations against member States of the International Labour Organisation;

(c) (i) That, before acting on such allegations regarding any Member of the United Nations which is not a member of the International Labour Organisation, the Secretary-General, on behalf of the Council, will seek the consent of the Government concerned;

(ii) That upon receiving such consent, the Council will transmit to the Fact-Finding and Conciliation Commission, through the Governing Body of the International Labour Office, any allegations regarding infringements of trade union rights by Members of the United Nations which are not members of the International Labour Organisation, received from Governments or trade union or employers' organizations, which it considers suitable for transmittal;

---

a/ See document E/1595 and Corr.1.

(iii) That if such consent is not forthcoming, the Council will give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case;

Requests the Secretary-General to bring allegations regarding infringements of trade union rights received from Governments or trade union or employers' organizations to the attention of the Council, notwithstanding the provisions of resolution 75 (V) as amended; b/

Invites the International Labour Organisation:

(a) To refer, in the first instance, to the Council any allegations regarding infringements of trade union rights against a Member of the United Nations which is not a member of the International Labour Organisation;

(b) To make suitable arrangements which would permit the Fact-Finding and Conciliation Commission of the International Labour Organisation to transmit to the Council any reports on cases regarding non-members of the International Labour Organisation;

(c) To include in the annual report of the International Labour Organisation to the United Nations an account of the work of the Commission; and

Recommends that the General Assembly refer allegations regarding trade union rights to the Council for action in accordance with the procedures adopted by it as provided in this resolution.

---

b/ See Council resolutions 116 A (VI), 192 A (VIII) and 275 (X).

Annex II

NOTE VERBALE DATED 27 FEBRUARY 1991 FROM THE PERMANENT REPRESENTATIVE OF SOUTH AFRICA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of the Republic of South Africa presents his compliments to the Secretary-General of the United Nations and has the honour to refer to his note verbale dated 1 May 1990 regarding the examination by the Economic and Social Council of a request from the Governing Body of the International Labour Office to consider certain allegations of the infringement of trade union rights in the Republic of South Africa.

The Permanent Representative of South Africa to the United Nations Office at Geneva has been authorized by the Government of South Africa to transmit a letter from the Minister of Manpower to the Director-General of the International Labour Office confirming that the Government is prepared to agree that the allegations of infringement of trade union rights submitted by the Congress of South African Trade Unions (COSATU) on 11 May 1988 be referred to the Fact-Finding and Conciliation Commission on Freedom of Association.

The above consent is given with the understanding that the Government of South Africa shall have full access to all information, documents and other evidence or arguments submitted to the Fact-Finding and Conciliation Commission and be given fair opportunity to respond thereto.

A copy of the Minister of Manpower's letter dated 19 February 1991 to the Director-General of the International Labour Office, advising him of the South African Government's decision, is appended to the present note verbale.

/...

Appendix

LETTER DATED 19 FEBRUARY 1991 FROM THE MINISTER OF MANPOWER OF THE GOVERNMENT OF SOUTH AFRICA TO THE DIRECTOR-GENERAL OF THE INTERNATIONAL LABOUR OFFICE

Complaint submitted by the Congress of South African Trade Unions (COSATU) against the Government of the Republic of South Africa

Reference is made to the requests dated 21 July 1988 and 12 February 1990, by the Secretary-General of the United Nations requesting the Republic of South Africa's consent for the complaint by COSATU to be referred to the Fact-Finding and Conciliation Commission on Freedom of Association of the International Labour Organisation.

During our meeting on 24 September 1990 we, inter alia, discussed the above-mentioned complaint. It gives me pleasure to advise you that, as a result of the explanations given at that meeting, the Government of the Republic of South Africa hereby gives its consent that the issues raised by COSATU, i.e.:

1. The alleged preference that the Government of South Africa seeks to give to racially constituted unions at the expense of non-racial ones as more fully set out in the memorandum annexed to COSATU's letter dated 11 May 1988;

2. The alleged abridgement of the right to strike as set out in the said memorandum,

be referred to the Fact-Finding and Conciliation Commission on Freedom of Association of the ILO.

The above consent is given with the understanding that the South African Government shall have full access to all information, documents, other evidence or arguments submitted to the Fact-Finding and Conciliation Commission in order to respond thereto and in fact be given a fair opportunity to respond.

It would be appreciated if you could bring the contents of this letter to the attention of the Economic and Social Council and the Governing Body of the ILO.

During our discussions on 24 September 1990, the tripartite accord between the State, employers and trade unions was brought to your attention.

I am pleased to inform that the resultant accord was translated into legislation and passed by Parliament on 14 February 1991.

I am of the opnion that this amending legislation addresses the matters raised by COSATU.

We are looking forward to receiving the Fact-Finding and Conciliation Commission in South Africa.

The Government of South Africa fully associates itself with the aims of the convention concerning freedom of association.

(Signed) Eli LOUW
Minister of Manpower